



CITY OF BUFFALO
DEPARTMENT OF LAW

EXHIBIT

A

STATE OF NEW YORK: COUNTY OF ERIE

JAMES KISTNER,

Claimant,

-against-

THE CITY OF BUFFALO,

Respondent.

LEFT @ WINDOW
4:32 pm

MAR 31 2017 NOTICE OF CLAIM

PLEASE TAKE NOTICE that the Claimant, James Kistner, hereby files this
notice of claim with the City of Buffalo pursuant to General Municipal Law Section 50-e.

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

James Kistner, residing at 33 Schmarbeck Ave., Buffalo, New York 14212, being
duly sworn, deposes and states:

Name and post-office address of the claimant: James Kistner, 33 Schmarbeck Ave.,
Buffalo, New York, 14212.

Name and post-office address of claimant's attorney: James Ostrowski, 63 Newport
Ave., Buffalo, New York, 14216 (716) 435-8918.

The nature of the claim: The claim is for vehicular negligence or assault, false arrest,
assault, battery, and malicious prosecution against the Claimant under state and federal law (42
USC 1983) by the City of Buffalo and the following City employees acting within the scope of
their employment and under color of state law: Lauren McDermott, Jenny Velez, Karl Schulz,
Kyle Moriarty and "John Doe."

The respondent's employees initiated false charges against the claimant with malice, including criminal mischief in the third degree (PL 145.05(2)) and disorderly conduct (PL 240.20(3)). The criminal mischief charge was first reduced to a misdemeanor and then dismissed on the merits on March 24, 2017 in Buffalo City Court by Judge James McLeod. The disorderly conduct charge is pending. The two accusatory instruments are attached hereto as Exhibit "A".

The time when, the place where and the manner in which the claim arose: On January 1, 2017, at about 11:00 a.m., the aforementioned officers responded to a call for assistance concerning a tenant issue at 33 Schmarbeck Ave., owned by the claimant. When claimant went out on the street to speak with the officers about an issue involving his building and his tenant, the car driven by Officers McDermott and Velez drove toward the claimant who was in plain sight and struck the claimant, causing, on information and belief, a possible serious injury. Claimant continues to seek treatment in that regard.

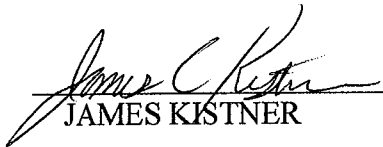
The officers then arrested the claimant, falsely alleging that he intentionally struck and damaged the vehicle. He was handcuffed and forcibly taken into a police car, then transported to Erie County Medical Center (ECMC), allegedly for a forensic examination. After being detained at ECMC for about four hours, and prevented from speaking to his attorney who came to the hospital, he was taken to Central Booking and charged as noted above. He was at Central Booking for about one hour. He was then forcibly taken back to ECMC where he remained for about two hours. He was then released with an appearance ticket and ordered to appear in Buffalo City Court.

Claimant was forced to appear in City Court many times and expend funds for an attorney. His attorney, James Ostrowski, provided a videotape of the arrest to the District

Attorney and the criminal mischief charge was dismissed on the merits on motion of the District Attorney. The claimant has a motion to dismiss the disorderly conduct charge pending.

The items of damage or injuries claimed to have been sustained: Claimant's damages and injuries include: loss of liberty due to the arrest and prosecution, confinement and incarceration, pain and suffering, injuries from handcuffing, anxiety, humiliation, loss of reputation, possible serious injuries from the vehicle collision, attorneys' fees and other out of pocket expenses. The total amount claimed will be supplied upon demand.

Dated: March 31, 2017
Buffalo, New York



JAMES KISTNER

JAMES OSTROWSKI
Attorney for Claimant
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
jameso@apollo3.com

SWORN TO BEFORE ME THIS
31st DAY OF MARCH, 2017
JAMES OSTROWSKI
Notary Public-State of New York
Qualified in Erie County
Commission expires 7/5/2019

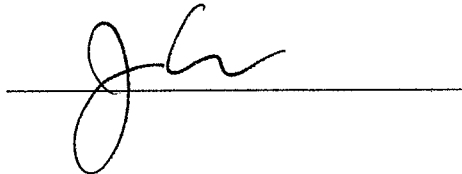


Exhibit “A”

The People of the State of New York

vs.

JAMES KISTNER DOB: [REDACTED] 60
37 SCHMARBECK
BUFFALO, NY

INFORMATION / COMPLAINT

I, **Police Officer LAUREN M. MCDERMOTT**, a police officer herein, accuse **JAMES KISTNER**, the DEFENDANT of this action, and charge that on or about Sunday, January 1, 2017 at 33 SCHMARBECK AV in the CITY OF BUFFALO, County of ERIE, at about 10:54 AM, said DEFENDANT did commit the offense of:

CRIMINAL MISCHIEF 3RD - DAMAGE >\$250.

a class E FELONY contrary to the provisions of section 145.05, subsection(s) 02 of the Penal Law of the State of New York.

145.05-2 - CRIMINAL MISCHIEF IN THE THIRD DEGREE

IN THAT THE DEFENDANT, WHILE AT 37 SCHMARBECK, DID WITH INTENT TO DAMAGE THE PROPERTY OF ANOTHER PERSON, CITY OF BUFFALO POLICE DEPARTMENT, AND HAVING NO RIGHT TO DO SO NOR ANY REASONABLE GROUND TO BELIEVE THAT HE HAD SUCH RIGHT, DID DAMAGE THE PROPERTY, TO WIT; DRIVER'S SIDE MIRROR AND DRIVER'S SIDE MIRROR OF PATROL VEHICLE, IN THE AMOUNT OF MORE THAN \$250.00, IN THAT THE DEFENDANT DID INTENTIONALLY THROW HIS BODY INTO THE DRIVER'S SIDE MIRROR OF PATROL VEHICLE #473, CAUSING THE MIRROR TO BECOME DISLODGED FROM THE VEHICLE AND ALSO CAUSING THE DRIVER'S SIDE WINDOW TO MALFUNCTION, THE VALUE OF SAID DAMAGE TO EXCEED \$250.00. THE DEFENDANT DID CAUSE SAID DAMAGE TO THE ABOVE MENTIONED PROPERTY WITHOUT THE PERMISSION OF THE OWNER.

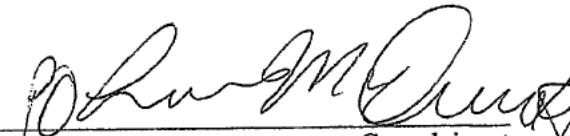
ALL CONTRARY TO THE PROVISIONS OF THE STATUTE IN SUCH CASES MADE AND PROVIDED. THE ABOVE ALLEGATIONS OF FACT ARE MADE BY THE COMPLAINANT HEREIN ON DIRECT KNOWLEDGE.

Therefore, the complainant requests that said defendant be dealt with according to the provisions of the Criminal Procedure Law, and according to law.

NOTICE

(Penal Law, Section 210.45)

It is a crime, punishable as a Class A Misdemeanor under the Laws of the State of New York, for a person, in a written instrument, to knowingly make a false statement, or to make a statement which such person does not believe to be true.


Complainant

Subscribed and sworn to me this
1st of January, 2017

The People of the State of New York
vs.
JAMES KISTNER DOB: [REDACTED] 60
37 SCHMARBECK
BUFFALO, NY

CD #: 17-0010506
INFORMATION / COMPLAINT

I, Police Officer LAUREN M. MCDERMOTT, a police officer herein, accuse JAMES KISTNER, the DEFENDANT of this action, and charge that on or about Sunday, January 1, 2017 at 33 SCHMARBECK AV in the CITY OF BUFFALO, County of ERIE, at about 10:54 AM, said DEFENDANT did commit the offense of:

DISORDERLY CONDUCT

a VIOLATION contrary to the provisions of section 240.20, subsection(s) 03 of the Penal Law of the State of New York.

THE SAID DEFENDANT, AT THE AFORESAID TIME AND PLACE, WITH INTENT TO CAUSE PUBLIC INCONVENIENCE, ANNOYANCE OR ALARM, OR RECKLESSLY CREATING A RISK THEREOF, WHILE IN A PUBLIC PLACE, DID USE ABUSIVE OR OBSCENE LANGUAGE, OR MADE AN OBSCENE GESTURE. IN THAT THE DEFENDANT DID INTENTIONALLY THROW HIS BODY INTO THE DRIVER'S SIDE MIRROR OF PATROL VEHICLE #473, CAUSING THE MIRROR TO BECOME DISLODGED FROM THE VEHICLE AND ALSO CAUSING THE DRIVER'S SIDE WINDOW TO MALFUNCTION, THE VALUE OF SAID DAMAGE TO EXCEED \$250.00 AND WHILE AT BEING TREATED AT ECMC THE DEFENDANT DID USE OBSCENE AND OFFENSIVE LANGUAGE TOWARD OFFICERS AND MEDICAL STAFF. SAID ACTIONS BY THE DEFENDANT DID CAUSE A PUBLIC ANNOYANCE AND ALARM.


ALL CONTRARY TO THE PROVISIONS OF THE STATUTE IN SUCH CASES MADE AND PROVIDED. THE ABOVE ALLEGATIONS OF FACT ARE MADE BY THE COMPLAINANT HEREIN ON DIRECT KNOWLEDGE.

Therefore, the complainant requests that said defendant be dealt with according to the provisions of the Criminal Procedure Law, and according to law.

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